

IN THE MATTER OF	:	BEFORE THE
ODA H. VON BERG	:	HOWARD COUNTY
t/a TRUSTY FRIENDS ANIMAL ART	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 06-21C

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DECISION AND ORDER

On July 3, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Oda H. von Berg, t/a Trusty Friends Animal Art, Petitioner, for a conditional use for an art gallery and craft shop in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Section 131.N.5 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Oda von Berg and Marshall Nichols testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find the following facts:

1. The subject property, known as 14352 Maryland Route 144, is located in the 4th Election District on the north side of Route 144 about 3,000 feet east of Maryland Route 97 in Cooksville (the "Property"). The Property is referenced on Tax Map 8, Grid 24, as Parcel 107.
2. The Property consists of 1.955 acres and is rectangular in shape. The Property has about

307 feet of frontage on Route 144 and is about 258 feet deep.

The Property is improved with a 729 square foot, one-story, single-family dwelling located less than 70 feet from the front lot line.¹ A 20' by 25' two-car garage is located 32 feet to the northeast of the house. A nine foot wide gravel driveway loops around the rear of the home and in front of the garage. This driveway has two entrance points onto Route 144 southeast and southwest of the house. A septic area is located northwest of the house. Large mature trees are situated in front of the house with branches extending over the Route 144 right-of-way. Lawn areas surround the buildings and driveway, while the north and east portions of the Property are wooded.

3. Vicinal properties are zoned RC-DEO and include:

(a) To the north of the Property is Parcel 109, a 23.91 acre unimproved lot.

(b) To the east is Parcel 108, a ½-acre unimproved lot.

(c) To the south across Route 144 are Parcel 46, a 132-acre farm with an agricultural preservation easement, and Parcel A, a 17.71 acre preservation parcel of the Avery Property subdivision.

(d) To the west is Parcel 380, a one acre unimproved lot.

4. The Petitioner proposes to use the existing dwelling on the Property to operate an art gallery and craft shop. No new structures are proposed. The art gallery and craft shop will operate from 10:00 am to 6:00 p.m. four days a week. The only proposed improvement to the site will be a three-car gravel parking area in front of the house adjoining the east driveway. Parking for three more cars will be provided on a grass area to the northwest of the house. An approved sign will

¹ The Petitioner testified that she measured 80 feet from the house to the white line on Route 144, which is at least 10 feet from the edge of the paved shoulder.

advertise the business. No new lighting is proposed.

5. The Property is served by private well and septic facilities. The 2000 General Plan designates the Property as “Rural Conservation Area.” Route 144 is a minor arterial with two travel lanes and 22 feet of paving within a variable width right-of-way. The posted speed limit in the area of the Property is 50 miles per hour.

The Property is in a valley between two steep hills along Route 144. Because of the large trees and vegetation in the front of the property, sight distance from the existing driveways is severely limited.

6. Ms. Von Berg testified that the business will operate Wednesdays through Saturdays. She will operate the business herself and live in the dwelling. She stated that she is willing to relocate the proposed front yard parking to the rear of the home. She agreed that she will remove the vegetation along Route 144 to the extent necessary to provide adequate sight distance and will install a deceleration lane.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B).

A. General Plan: The Howard County General Plan designates the area in which the Property is located as “Rural Conservation.” The 2000 General Plan permits certain commercial development in the rural west if “such development [is limited] to a scale appropriate to serve the local needs of the surrounding community rather than the interstate traveler.” The proposed art gallery and craft shop will be operated out of a small home with limited hours and thus is a low

intensity local commercial use. Provided that the Petitioner relocates the proposed three-car parking lot from the front to the rear of the home, all parking for the use will take place behind the home. The business will be operated primarily indoors on the nearly 2-acre site and is located on a minor arterial roadway. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

B. Adverse Effect: The Petitioner has met her burden of presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with an art gallery and craft shop in the RC district:

1. Physical Conditions. The proposal consists of the operation of an art gallery and craft shop within the Petitioner's existing dwelling. The proposed use will be conducted by the owner entirely within the proposed building, and consist of activities that are normally associated with an art gallery and craft shop. The business will operate from 10:00 a.m. to 6:00 p.m. Wednesdays through Saturdays. Provided the driveway and parking area are paved, the use will not generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with an art gallery and craft shop in an RC zoning district, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. No changes to the existing structures will be made. The building is adequately separated and screened by trees from vicinal properties. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping

on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. Parking and Drives. The Petitioner proposes to provide six parking spaces, which is two more than the four parking spaces required. However, three of the spaces are proposed to be located in front of the house and will likely encroach into the 50-foot setback from the Route 144 right-of-way required by Section 104.E.4.b(1). Moreover, if the parking were to be located in front of the house, it would not be adequately screened from the public road. Conversely, if all parking is located to the rear of the home, it will be adequately separated and screened from view. Consequently, provided that all parking is located to the rear of the home, parking areas and driveways will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. Safe Access. As proposed, the existing driveways do not provide safe ingress and egress. This is because the vegetation in front of the Property severely restricts the sight distance for vehicles exiting the site. In addition, the steep hills on either side of the Property combined with the extensive vegetation make it difficult for approaching vehicles to see the entrance drives and create a hazardous approach for westbound vehicles. These extraordinary adverse effects can be mitigated, however, if the Petitioner (a) removes the vegetation along Route 144 to the extent necessary to provide adequate sight distance, and (b) installs a deceleration lane along Route 144. With these conditions, the driveways will provide safe access with adequate sight distance, as required by Section 131.B.2.d.

II. Specific Criteria for Antique Shops, Art Galleries and Craft Shops (Section 131.N.5).

1. The Petitioner does not propose to store or display merchandise outside of the structure; therefore, Section 131.N.5.a does not apply.

2. The proposed business will operate from an existing one-story, single-family dwelling which will not be altered. Adjoining lots are unimproved. The design of the structure is therefore compatible with that of other structures in the vicinity in accordance with Section 131.N.5.b.

3. The use will be operated by the Petitioner who will reside in the house on the Property in compliance with Section 131.N.5.c.

ORDER

Based upon the foregoing, it is this **10th day of August 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Oda H. von Berg, t/a Trusty Friends Animal Art, for a conditional use for an art gallery and craft shop in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District is hereby **GRANTED**;

Provided, however, that the conditional use will apply only to the uses and structures as described in the petition and conditional use plan submitted and not to any other activities, uses, structures, or additions on the Property, and subject to the following conditions:

1. The use may operate from 10:00 a.m. to 6:00 p.m. Wednesdays through Saturdays.
2. The use will be operated by the Petitioner who will reside on the Property.
3. All parking will be located to the rear of the dwelling.
4. The Petitioner will remove the vegetation along Route 144 to the extent necessary to provide adequate sight distance from the driveway.
5. The Petitioner will install a deceleration lane along Route 144.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.